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SERVICE DATE - LATE RELEASE AUGUST 14, 1998

SURFACE TRANSPORTATION BOARD

DECISION

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

STB Docket No. AB-6 (Sub-No. 379X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--
ABANDONMENT EXEMPTION--IN GARFIELD AND LOGAN COUNTIES, OK

Decided: August 14, 1998

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 42.80 miles of its line of railroad between milepost 73.60 near Fairmont and milepost 116.40 near Guthrie including the stations of Douglas at milepost 82.4, Marshall at milepost 88.4, Lovell at milepost 95.1, and Crescent at milepost 102.8, in Garfield and Logan Counties, OK. Notice of the exemption was served and published in the Federal Register on May 6, 1998 (63 FR 25132-33). The exemption was scheduled to become effective on June 5, 1998, provided no formal expression of intent to file an offer of financial assistance (OFA) was filed.

By petition filed May 18, 1998, the Oklahoma Department of Transportation (ODOT) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with BNSF for acquisition of the right-of-way for use as a trail. By letter dated June 1, 1998, BNSF indicated its agreement to a trail use condition.

Also on May 18, 1998, the Oklahoma Department of Transportation (ODOT) timely filed a notice of intent to file an offer of financial assistance (OFA). The filing of the notice of intent automatically stayed the effective date of the exemption until June 15, 1998. By decision served June 2, 1998, the Board held the requests for issuance of a notice of interim trail use and for issuance of a public use condition in abeyance pending completion of the OFA process.¹ On June 5, 1998, BNSF filed a request for a 60-day extension in accordance with 49 CFR 1152.27(c)(2)(ii)(D), to permit it to develop and submit the required information/and or otherwise complete voluntary negotiations for the transfer of the line. BNSF stated that it had provided some data to ODOT, but had not provided all of the requested information in view of time constraints and ongoing negotiations. ODOT did not object and supported the extension.

¹ The June 2, 1998 decision also imposed an environmental condition requiring that BNSF, while conducting salvage activities, not store rail, ties, or salvage equipment in the 100-year floodplain.

On August 6, 1998, ODOT filed a notice of intent to proceed with interim trail use and rail banking under 49 CFR 1152.29(d). ODOT states that, in the event that the parties are unable to reach an agreement under a NITU by September 1, 1998, it would like the Board to issue a procedural schedule for filing an OFA under 1152.27(c).² ODOT states that BNSF has not provided all of the information that it requested under 49 CFR 1152.27(a) to file an OFA. By letter filed August 7, 1998, BNSF states that it and ODOT have reached an agreement in principle on the terms of a transfer of the right-of-way and anticipate executing an interim trail use/rail banking agreement in the near future. BNSF also states that it concurs in the request for relief by ODOT.

There is no need to issue a NITU at this time. BNSF and ODOT are free to negotiate for acquisition of the right-of-way. Under these unique circumstances, the time for filing an OFA will be extended to October 1, 1998, and the effective date of the exemption will be postponed until October 11, 1998. If ODOT files an OFA, the section 10904 process will go forward. If ODOT elects to forgo filing an OFA, and wishes instead for the Board to issue a NITU, ODOT should so notify the Board and an appropriate decision and notice of interim trail use can be promptly issued at that time.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The requests for issuance of a notice of interim trail use are held in abeyance.
3. BNSF is directed to provide ODOT with the requested information to enable ODOT to file an OFA. The time period for ODOT to file an OFA is extended until October 1, 1998, and the effective date of the exemption is postponed until October 11, 1998.

² ODOT states that it and BNSF have agreed on the general terms that will govern the transfer of the land, track and other materials to ODOT under an interim trail use agreement, and expect to close on or before August 21, 1998. ODOT proposes to notify the Board by September 1, 1998, if the parties are unable to reach a trail use agreement by that time, and BNSF has evidently committed to providing ODOT with the further information it needs to file an OFA by September 16, 1998. ODOT proposes a schedule that would provide for its OFA to be filed by October 1, 1998. BNSF will not salvage track and materials during negotiations, or while the OFA process is continuing.

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4. This decision is effective on its service date.

By the Board, David M. Konschnik Director, Office of Proceedings.

Vernon A. Williams
Secretary